UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LLOYD VICKROY,	CASE NO CV 89-5321
Plaintiff,	**ORDER AND JUDGMENT**
vs.	
ROCKWELL INTERNATIONAL CORPORATION, AUTONETICS ELECTRONICS SYSTEMS,	DATE: July 23, 1990 TIME: 10:00 a.m. CRTM: Honorable
Defendants.	ROBERT C. BONNER

This matter came on regularly for hearing on the Motion for Summary Judgment of Defendant ROCKWELL INTERNATIONAL CORPORATION on July 23, 1990. Defendant appeared through its counsel of record, William R. Hartman,

Jr. Plaintiff appeared for himself. After having reviewed the record and all papers on file herein, and having considered the argument of counsel, both written and oral, the Court rules as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Summary Judgment shall be entered in favor of Defendant ROCKWELL INTERNATIONAL CORPORATION on all causes of action.

DATED: July 23, 1990

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NO. 90-55974
CT/AG#: CV-89-5321-AAH

LLOYD VICKROY

Plaintiff/Appellant

vs.

ROCKWELL INTERNATIONAL CORPORATION,
AUTONETICS ELECTRONICS SYSTEMS,

Defendants/Appellee

APPEAL FROM the United States District Court for the Central District of California.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California and was

duly submitted.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED.

Filed and entered June 4, 1991.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LLOYD VICKROY	]	NO. 90-55974
	]	D.C. NO.
Plaintiff/ Appellant,	]	89-5321 RB (Ex)
	]	MEMORANDUM*
vs.	]	
	]	
ROCKWELL INTERNATIONAL,	]	
	]	
Defendant/ Appellee.	]	
	]	

Appeal from the United States District Court for the Central District of California
Robert C. Bonner, District Judge, Presiding

Submitted April 5, 1991**
Pasadena, California

Before: KOZINSKI AND O'SCANNLAIN,

Circuit Judges and MCNAMEE***
District Judge.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit R. 36-3.

** The panel unanimously finds this case suitable for submission on the record and briefs and without oral argument. Fed. R. App. P. 34(a), Ninth Circuit R. 34-4.

*** The Honorable Stephen M. McNamee, United States District Judge for the District of Arizona, sitting by designation.

OVERVIEW

Pro Se appellant, Lloyd Vickroy, appeals the District Court's grant of Appellee Rockwell's motion for summary judgment. Vickroy's complaint against his employer, Rockwell, alleged civil rights violations under 42 U.S.C. Sections 1981 and 1983, breach of union representation, breach of contract, unlawful discharge, unfair labor

practices, and intentional infliction of emotional distress. The District Court's decision is affirmed.

I

The District Court granted Defendant's Motion for Summary Judgment finding no triable issues of fact. The facts are not in dispute. This action arises from a delay in paying Vickroy for one day of overtime work. At the time of the alleged violations, Vickroy, a caucasian male, was a member of Local 2295 of the International Brotherhood of Electrical Workers ("union"). A collective bargaining agreement between the union and Vickroy's employer, Rockwell, was in place. The collective bargaining agreement clearly provided for resolution of disputes with respect to overtime pay. Vickroy filed a grievance in accordance with the collective

bargaining agreement. Rockwell agreed to pay the amount in question and Vickroy refused to accept the payment and filed a lawsuit against Rockwell instead. The union is not a defendant in this suit.

II

We review a District Court's decision to grant or deny a Motion for Summary Judgment de novo. Continental Casualty Co. v. City of Richmond, 763 F.2d 1076, 1078-1079 (9th Cir., 1985); Lew v. Kona Hospital, 754 F.2d 1420, 1423 (9th Cir., 1985). The standard is the same that is applied by the District Court under Federal Rule of Civil Procedure 56(c) and the District Court's decision will only be affirmed if the record, read in the light most favorable to the non-moving party, establishes that there is no genuine issue of material

fact and the moving party is entitled to judgment as a matter of law. Continental Casualty Co. 763 F.2d at 1079. A motion for summary judgment against a party is appropriate when that party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corporation v. Catrett, 477 U.S. 317, 322 (1986).

A

42 U.S.C. Section 1981 grants all persons the same right to make and enforce contracts "as is enjoyed by white citizens." 42 U.S.C. Section 1981. There is no evidence to show that Mr. Vickroy was discriminated against by Rockwell based on his race in the making and enforcing of a contract. First, Vickroy is a white male. Second, even if

Vickroy could show he was somehow discriminated against, Section 1981 claims are limited to the making or enforcement of contracts. See Patterson v. McClean, 491 U.S. 164, 176 (1989). "The right to make contracts does not extend ... to conduct by employer after contract relation has been established, including breach of terms of contract ..." Id. at 177. Therefore, non-payment of overtime wages is not protected by Section 1981, and summary judgment is appropriate.

B

42 U.S.C. Section 1983 protects United States citizens from deprivation of rights by another person acting under color of state law. Because California state law requires arbitration of these types of disputes, Vickroy argues that Rockwell, a private corporation, was

acting as an agent of the state when it failed to pay him overtime wages. Vickroy has offered no evidence to raise any triable issues of fact that Rockwell was an agent of the State of California. Absent any showing that Rockwell was acting under color of state law when it failed to pay Vickroy overtime wages, summary judgment is appropriate. See Celotex, 477 U.S. at 322-23.

C

Vickroy also argues that he was denied fair representation by the union. The union, however, is not a party to this suit.

Vickroy sought compensation for one day of overtime work that was delayed. The union representative produced a check from Rockwell for the overtime work which Vickroy refused to accept. There is absolutely no evidence to show that the

union breached its duty to Mr. Vickroy. Vickroy has not designated any specific facts showing that there is a genuine issue for trial. Therefore, summary judgment is appropriate. See Celotex, 477 U.S. at 324.

Additionally, the statute of limitations on a claim of breach of the duty of fair representation is six months. DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151, 163-72 (1983); Kelley v. International Brotherhood of Electrical Workers, 803 F.2d 516, 518 (9th Cir., 1986). The alleged breach took place during the summer of 1988. Vickroy did not file his complaint until July 20, 1989. Because the statute of limitations has run on this claim, Vickroy is precluded from raising this issue now, and summary judgment is appropriate.

D

Although it is not clear from the briefs, it appears that Vickroy's allegations of breach of contract, unlawful discharge, and unfair labor practices are all based on Rockwell's inability to pay him overtime wages in a timely manner. A collective bargaining agreement was in place which covered disputes over wages. The agreement included grievance procedures and an arbitration clause. Vickroy filed a grievance and Rockwell conceded to owing Vickroy overtime wages. If Vickroy was not satisfied with the outcome of the grievance proceeding, he could have requested arbitration. Vickroy argues that failure to arbitrate was Rockwell's fault. Rockwell, however, complied with the grievance procedure by agreeing to pay the overtime wages. The arbitration

clause included in the collective bargaining agreement was Vickroy's remedy. He failed to request such arbitration. Vickroy has made no showing to establish the existence of a triable issue of fact as to breach of contract, unlawful discharge, and unfair labor practices, therefore, summary judgment is appropriate. See Celotex, 477 U.S. at 322.

In addition, the statute of limitations on an action involving breach of a collective bargaining agreement is six months. DelCostello, 462 U.S. at 163-72; Kelley, 803 F.2d at 518. Because the statute of limitations has run on this claim, Vickroy is precluded from raising this issue now.

Furthermore, Vickroy's state law claims are preempted by Section 301 of the Labor Management Relations Act

because their resolution requires the interpretation of the collective bargaining agreement. Lingle v. Norge Division of Magic Chef, Inc., 486 U.S. 399, 413 (1988); Harris v. Alumax Mill Products, Inc., 897 F.2d 400, 403 (9th Cir.). cert denied, 111 S. ct. 102 (1990).

E

Vickroy has offered no evidence to support a claim of intentional infliction of emotional distress. Absent any evidence of sufficiently outrageous conduct by Rockwell, Vickroy has failed to state a claim. McCabe v. General Foods Corp., 811 F.2d 1336, 1340 (9th Cir., 1987). Without any showing to establish this element of his case, summary judgment is appropriate. See Celotex, 477 U.S. at 322.

Furthermore, Section 301 of the

Labor Management Relations Act preempts Vickroy's claim of infliction of emotional distress that arises out of the same conduct which formed the basis of his claims of breach of contract, unfair labor practices, and unlawful discharge. Lingle, 486 U.S. at 425; Harris, 897 F.2d at 403.

F

Finally, Rockwell's request for attorney's fees based on the assertion that Vickroy filed a frivolous appeal is denied. Rockwell filed a cursory one and a half page brief which offered no guidance to this court on the issues or applicable law. Our expectation of practitioners in this court is much higher than was shown by Rockwell's counsel on this appeal. Therefore, Rockwell's prayer for costs is denied.

III

No genuine issues of material fact are in dispute. Vickroy has made no showing sufficient to establish the existence of any element essential to his case. The District Court's decision granting summary judgment is affirmed.

AFFIRMED.

Date of Decision June 4, 1991

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LLOYD VICKROY,	NO. 90-55974
	D.C. NO. CV89-5321-RB
Plaintiff/Appellant	ORDER
vs.	
ROCKWELL INTERNATIONAL CORP., AUTONETICS ELECTRONICS SYSTEMS,	
Defendant-Appellee.	

Before: KOZINSKI and O'SCANNLAIN, Circuit Judges, and MCNAMEE*, District Judge.

The Petition for rehearing is denied.

Date of Decision July 18, 1991

* The Honorable Stephen M. McNamee, United States District Judge for the District of Arizona, sitting by designation.

UNITED STATES DISTRICT COURT

FOR THE STATE OF CALIFORNIA

LLOYD VICKROY,	]	NO. CV92-428-AAH
	]	
Plaintiff/Appellant	]	
	]	**ORDER GRANTING**
vs.	]	**DEFENDANT'S**
	]	**MOTION FOR**
ROCKWELL INTER-	]	**SUMMARY JUDGMENT**
NATIONAL CORP.,	]	
AUTONETICS	]	
ELECTRONICS SYSTEMS,	]	
	]	
Defendant-Appellee.	]	
	]	

INTRODUCTION

In 1989, the Plaintiff, Lloyd Vickroy, filed suit in the United States District Court for the Central District of California against the Defendants, Rockwell International and various employees and agents of Rockwell, alleging numerous civil rights violations. Judge Robert Bonner granted

Defendant's motion for summary judgment, and the Ninth Circuit affirmed. Plaintiff has now filed ten new causes of action against these same Defendants, claiming that during the previous proceedings persons employed by Rockwell either made misrepresentations while under oath, or that they allowed others to state what they knew to be falsities in this court. Mr. Vickroy alleges that this alleged perjured testimony violated his right to due process under the Fifth Amendment to the United States Constitution. Defendants are now before this Court seeking summary judgment in the instant action because the issues raised by this case have been previously adjudicated.

DISCUSSION

I. Motion for Summary Judgment.

Plaintiff's complaint claims to

state a cause of action under the Fifth Amendment to the United States Constitution. However, Plaintiff is actually seeking to relitigate the issues previously decided in the underlying case of Lloyd Vickroy v. Rockwell International, CV 89-5321 RB (Ex). Plaintiff's current suit claims that various employees and agents of Rockwell lied under oath during proceedings relating to the underlying case. As the Plaintiff himself has admitted, the credibility of the testimony of these agents and employees of Rockwell was a material fact in the underlying case. (See Vickroy Deposition pg. 30, 41, 50, 106 and 107).

Since both the District and Court and the Ninth Circuit Court of Appeals decided that summary judgment under F.R.C.P. 56 was appropriate in the

underlying case, and therefore, that there was no genuine issue of material fact as to the credibility of these witnesses, this Court must also grant summary judgment on this same issue based upon the principle of res judicata. See Federated Department Stores, Inc. v. Moite, 452 U.S. 394 (1981) (Matters once tried shall be considered forever settled as between the parties). Therefore, Defendant's motion for summary judgment is GRANTED.

Based on the foregoing, IT IS ORDERED:

1. That Defendant's Motion for Summary Judgment is GRANTED.

The Clerk of the Court will serve copies of this order to all counsel of record.

DATED: October 26, 1992

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LLOYD VICKROY,	NO. 92-56469
	D.C. NO. CV-92-9428-AAH
Plaintiff/Appellant	MEMORANDUM*
vs.	
ROCKWELL INTERNATIONAL CORP., AUTONETICS ELECTRONICS SYSTEMS	
Defendant-Appellee.	

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA
A. ANDREW HAUK, DISTRICT JUDGE PRESIDING

Submitted June 8, 1993**
Filed June 18, 1993

Before: CANBY, FERNANDEZ, and T.G. NELSON, Circuit Judges

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

**The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

Lloyd Vickroy appeals pro so the district court's summary judgment for Rockwell International Corp., his former employer, and various employees and agents of Rockwell. The district court found that Vickroy's claims were barred by the doctrine of res judicata. We have jurisdiction under 28 U.S.C. 1291, and we affirm.

In this action, Vickroy contends that his fifth amendment due process rights were violated in a prior action brought by Vickroy against Rockwell because Defendants lied under oath during those proceedings. In the prior action in which Vickroy alleged several claims relating to the late payment of overtime wages by Rockwell, the district court

granted summary judgment in favor of the same Defendants. That judgment was affirmed by this court in Vickroy v. Rockwell International, No. 90-55974, unpublished memorandum disposition (9th Cir. June 4, 1991).

"We review both summary judgment and res judicata determinations de novo." E & J Gallo Winery v. Gallo Cattle Company, 967 F.2d 1280, 1287 (9th Cir. 1992).

Under the doctrine of res judicata, a final judgment on the merits of an action procludes the parties or their privies from relitigating all issues that were or could have been raised in that action. Robi v. Five Platters, Inc., 838 F.2d 318, 321-22 (9th Cir. 1988).

Vickroy's present action arises from the same asserted injury and involves the same parties as his prior action. He admits that his claims of perjury by the

Defendants were presented to this court in his prior action in a petition for rehearing and were rejected. Moreover, the credibility of the Defendants' testimony was a material fact properly considered and resolved by the district court in the prior action. Thus, the claims Vickroy asserts int he present action clearly fall within the bar of res judicata as they were or could have been raised in his prior action. See id. Accordingly, the district court did not err by granting summary judgment for the Defendants.

AFFIRMED.

Filed: June 18, 1993

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LLOYD VICKROY,	NO. 92-56469
	D.C. NO. CV-92-9428-AAH
Plaintiff/Appellant	ORDER
vs.	
ROCKWELL INTERNATIONAL CORP., AUTONETICS ELECTRONICS SYSTEMS	
Defendant-Appellee.	

Before: CANBY, FERNANDEZ, and T.G. NELSON,
Circuit Judges.

The Petition for rehearing is denied.

Date of Decision October 26, 1993

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

LLOYD VICKROY,

Petitioner

vs.

ROCKWELL INTERNATIONAL CORPORATION,
AUTONETICS ELECTRONICS SYSTEMS,

Respondent

CERTIFICATE OF SERVICE

The undersigned, DEBBIE ANDERSON, of the Law Offices of DALE M. FIOLA, the Attorney for Petitioner, LLOYD VICKROY, hereby certifies that on the 25th day of January, 1994, she served the foregoing Supplemental Appendix to Petition for Writ of Certiorari on all the parties hereto, by mailing three copies by ordinary mail, postage pre-paid, addressed as follows:

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